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C O N F I D E N T I A L QUITO 000633

SIPDIS

E.O. 12958: DECL: 07/11/2018
TAGS: [PGOV](#) [EFIN](#) [EC](#)
SUBJECT: UPDATE ON SEIZURE OF ISAIAS GROUP PROPERTIES

REF: A. QUITO 616
[1](#)B. QUITO 617

Classified By: Classified by A/DCM Douglas Griffiths. Reason: 1.4 B and D.

[1](#)1. (C) Summary. The Constituent Assembly approved a mandate ratifying the Correa Administration's decision to seize the assets of the Isaias group and blocking any judicial appeal. One former Finance official, who worked on the Filanbank/Isaias case under a previous government, believes that the government action was based on weak legal grounds. End summary.

Assembly Ratifies AGD Decree, Blocks Legal Challenge

[1](#)2. (U) On July 9, the Constituent Assembly approved a mandate (a temporary law) ratifying the "legal validity" of the decree issued on June 7 by the Deposit Guarantee Agency (AGD) to seize the assets of the Isaias Group (reftel a). The AGD decree asserted that Filanbanco, then owned by the Isaias family, incurred losses totaling \$661.5 million as of 1998 and that Filanbanco made false statements about its capital and altered its books. The decree invoked Article 29 of the Law for the Reordering of Economic Material in the Tax-Financial Area, a law that was approved in 2002. Article 29 states that bank administrators who make false declarations of a bank's capital or alter its balance sheet will guarantee, with their personal assets, the bank's depositors, and that the AGD can seize publicly known assets of the bank owners.

[1](#)3. (U) The mandate also states that AGD decree is not subject to legal appeal, that any motion filed against the decree must be immediately retired, and that any judge or magistrate must immediately reject any legal action or be subject to removal. The mandate also requires that the AGD apply Article 29 to owners and senior officials of other banks that have been taken over by the AGD.

Isaias Threatened Legal Action

[1](#)4. (U) The Assembly's action followed a statement by the Isaias Group asserting that they would seek a legal challenge to the decree. A lawyer for the family circulated a press statement challenging a number of factors behind the AGD decree, including that the 2002 law could not be applied retroactively, that the estimate of losses was based on a report by an accounting firm that expressly stated that the report was not an audit, and that no judge had made any legal ruling on the bank's finances.

View of a Former Finance Official

¶5. (C) Econ Couns discussed the legal basis for the AGD decree with Gilberto Pazmino, currently a banker, who served as Vice Minister for Economy in the Gutierrez administration, and in that capacity presided over the AGD board. He said that he did not want to defend the Isaias family and implied that he was frustrated that the Gutierrez administration was not able to do more about the matter at the time (he asserted the Isaias family and the Social Christian Party controlled the courts).

¶6. (C) Pazmino had reservations about the validity of the AGD decree, however. He said that when he was in the Ministry of Finance, AGD and Finance Ministry lawyers advised that any action based on the 2002 law would be subject to legal challenge, since the law was not retroactive. He also questioned the legal standing of the AGD declaration that Filanbanco falsified its balance sheet, saying that such a determination should be ratified by a judge, which had not happened.

¶7. (C) Pazmino speculated that Minister of Finance Ortiz, who quit rather than sign the AGD decree (reftel b), refused to sign the decree because he did not want to risk being subject to prosecution at a later date when Correa would no longer be able to defend him. Pazmino added that the same Ministry of Finance lawyers who advised him that it would personally risky to sign such a decree in 2003 are still working at the Ministry.

Comment

¶8. (C) Most Ecuadorians believe that the Isaias family abused their control over Filanbanco and made unsound loans to companies owned by the family and close associates. Many depositors and creditors lost money when the bank was closed and have yet to be fully compensated. However, the family has avoided any legal action, allegedly because of its influence -- including bribe and threats -- over the judicial and legislative systems.

¶9. (C) The Correa administration was willing to move on this once untouchable issue, expecting such an action to be popular with many Ecuadorians. It based its action on law, although according to several well-informed observers, the action was on shaky legal grounds. The Assembly's decision to reaffirm the decree will probably reinforce the standing of decision, since in practice at this time the Ecuadorian judiciary rarely rules against the Correa administration or the Constituent Assembly. However, the Assembly went even further and barred any legal appeal, which will raise questions about its commitment to allowing the judicial process to work independently.

Jewell